110TH CONGRESS
2d Session
HOUSE OF REPRESENTATIVES
REPORT
110–912

LANCE CORPORAL JOSE GUTIERREZ ACT OF 2008

OCTOBER 3, 2008.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. CONYERS, from the Committee on the Judiciary, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 6020]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 6020) to amend the Immigration and Nationality Act to protect the well-being of soldiers and their families, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

CONTENTS

79–006

THE AMENDMENT

The amendment is as follows:
Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Lance Corporal Jose Gutierrez Act of 2008".

SEC. 2. FACILITATING NATURALIZATION FOR MILITARY PERSONNEL.

(a) IN GENERAL.—Any person who served honorably as a member of the Armed Forces in support of contingency operations (as defined in section 101(a)(13) of title 10, United States Code) shall be eligible for naturalization pursuant to section 329 of the Immigration and Nationality Act (8 U.S.C. 1440) as if the person had served during a period designated by the President under such section 329.

(b) NATURALIZATION THROUGH SERVICE IN THE ARMED FORCES OF THE UNITED STATES.—Section 328 of the Immigration and Nationality Act (8 U.S.C. 1439) is amended—

(1) in subsection (a), by striking "six months" and inserting "one year";

(2) by striking subsection (c);

(3) in subsection (d), by striking "six months" and inserting "one year"; and

(4) by redesignating subsections (d), (e), and (f) as subsections (c), (d), and (e), respectively.

SEC. 3. FACILITATING REMOVAL OF CONDITIONAL STATUS FOR MILITARY PERSONNEL AND THEIR FAMILIES.

(a) PERIOD FOR FILING PETITION.—Section 216(d)(2) of the Immigration and Nationality Act (8 U.S.C. 1186a(d)(2)) is amended—

(1) in subparagraph (A), by striking "subparagraph (B)," and inserting "subparagraphs (B) and (D),"; and

(2) by adding at the end the following:

"(D) FILING OF PETITIONS DURING MILITARY SERVICE.—In the case of an alien who is serving as a member of the Selected Reserve of the Ready Reserve or in an active-duty status in the military, air, or naval forces of the United States during the 90-day period described in subparagraph (A), the alien may file the petition under subsection (c)(1)(A) during the 6-month period beginning on the date on which the alien is discharged from such service.".

(b) REQUIREMENTS OF TIMELY PETITION AND INTERVIEW FOR REMOVAL OF CONDITION.—Section 216(c)(1)(B) of the Immigration and Nationality Act (8 U.S.C. 1186a(a)(1)) is amended by inserting "or serving in the Armed Forces at the time of the interview" after "deceased".

SEC. 4. FACTORS TO CONSIDER IN INITIATING REMOVAL PROCEEDINGS AGAINST ACTIVE DUTY MILITARY PERSONNEL OR VETERANS.

Section 239 of the Immigration and Nationality Act (8 U.S.C. 1229a) is amended by adding at the end the following:

"(f)(1) A notice to appear shall not be issued against an alien who served honorably at any time in the Armed Forces of the United States, and who, if separated from such service, separated under honorable conditions, without prior approval from the Director of the United States Citizenship and Immigration Services or the Assistant Secretary of Homeland Security for U.S. Immigration and Customs Enforcement.

"(2) In determining whether to issue a notice to appear against such an alien, the Director or the Assistant Secretary shall consider the alien's eligibility for naturalization under section 328 or 329, as well as the alien's record of military service, grounds of deportability applicable to the alien, and any hardship to the Armed Services, the alien, and his or her family if the alien were to be placed in removal proceedings.

"(3) An alien who served honorably at any time in the Armed Forces of the United States, and who, if separated from such service, separated under honorable conditions, shall not be removed from the United States under subparagraph (A)(i) or (B)(iii) of section 235(b)(1), section 238, or section 241(a)(5).".

SEC. 5. DISCRETIONARY RELIEF FOR ACTIVE DUTY MILITARY PERSONNEL, VETERANS, AND FAMILY MEMBERS IN REMOVAL PROCEEDINGS.

(a) GROUNDS OF INADMISSIBILITY.—Section 212 of the Immigration and Nationality Act (8 U.S.C. 1182) is amended by inserting after subsection (b) the following:

"(c) MILITARY SERVICE PERSONNEL AND FAMILY MEMBERS.—

"(1) IN GENERAL.—With respect to an alien who served honorably at any time in the Armed Forces of the United States, and who, if separated from such serv-

ice, separated under honorable conditions, or an alien who is the spouse, child, son, daughter, parent, or minor sibling of a member serving in the Armed Forces of the United States—

"(A) paragraphs (4), (5), (6)(A), (7)(A), and (9)(B) of subsection (a) shall not apply;

"(B) the Secretary of Homeland Security, or the Attorney General, shall not waive—

"(i) subsection (a)(2)(B), if the alien actually was incarcerated for 5 years or more for the offenses described in such subsection;

"(ii) subparagraph (C), (D), (G), or (H) of subsection (a)(2);

"(iii) subparagraph (A), (B), (C), (E), or (F) of subsection (a)(3);

"(iv) subsection (a)(6)(E);

"(v) subparagraph (A) or (C) of subsection (a)(10); or

"(vi) subsection (a)(10)(D), if the alien has received a conviction, award, compromise, settlement, or injunction for an offense described in clause (i) of such subsection, and if the court finds that the alien did not reasonably believe at the time such violation that the alien was a citizen; and

"(C) the Secretary of Homeland Security, or the Attorney General, may waive any other provision of subsection (a).

"(2) WAIVER FACTORS.—In making a determination under paragraph (1)(C), the following factors may be considered:

"(A) The grounds of inadmissibility applicable to the alien.

"(B) The alien's service in the United States military, or the degree to which the alien's removal would affect a close family member who is serving or has served in the Armed Forces.

"(C) The length of time the alien has lived in the United States.

"(D) The degree to which the alien would be impacted by his or her removal from the United States.

"(E) The existence of close family ties within the United States.

"(F) The degree to which the alien's removal would adversely affect the alien's United States citizen, or lawful permanent resident, parents, spouses, children, sons, daughters, or siblings.

"(G) The alien's history of employment in the United States, including whether the alien has been self-employed or has owned a business.

"(H) The degree to which the alien's removal would adversely affect the alien's United States employer or business.

"(I) The degree to which the alien has ties to the alien's community in the United States or has contributed to the Nation through community, volunteer, or other activities.".

(b) GROUNDS OF DEPORTABILITY.—Section 237 of the Immigration and Nationality Act (8 U.S.C. 1227) is amended by adding at the end the following:

"(d) MILITARY SERVICE PERSONNEL AND FAMILY MEMBERS.—

"(1) IN GENERAL.—With respect to an alien who served honorably at any time in the Armed Forces of the United States, and who, if separated from such service, separated under honorable conditions, or an alien who is the spouse, child, son, daughter, parent, or minor sibling of a member serving in the Armed Forces of the United States—

"(A) paragraphs (1)(D), (3)(A), and (5) of subsection (a) shall not apply;

"(B) the Secretary of Homeland Security, or the Attorney General, shall not waive—

"(i) subsection (a)(1)(E);

"(ii) subsection (a)(2)(A)(ii), if the alien actually was incarcerated for 5 years or more for the offenses described in such subsection;

"(iii) subsection (a)(2)(A)(iii), if the aggravated felony involved was an offense described in subparagraph (A), (B), (C), (D), (E)(i), (H), (I), (K)(i), (K)(ii), (K)(iii), (L)(i), (L)(ii), (L)(iii), (M)(ii), (R), (S), or (U) of section 101(a)(43);

"(iv) clause (iv) or (v) of subsection (a)(2)(A);

"(v) clause (i) or (ii) of subsection (a)(2)(D);

"(vi) subsection (a)(2)(D)(iii), if the offense is a violation of the Trading With the Enemy Act;

"(vii) subsection (a)(2)(D)(iv), if the offense is a violation of section 278;

"(viii) subparagraph (A), (B), (C)(i), (D), or (E) of subsection (a)(4); or

"(ix) subsection (a)(6)(A), if the alien has received a conviction, award, compromise, settlement, or injunction for an offense described in such subsection, and if the court finds that the alien did not reasonably believe at the time such violation that the alien was a citizen; and

"(C) the Secretary of Homeland Security, or the Attorney General, may waive any other provision of subsection (a).

"(2) WAIVER FACTORS.—In making a determination under paragraph (1)(C), the following factors may be considered:

"(A) The grounds of deportability applicable to the alien.

"(B) The alien's service in the United States military, or the degree to which the alien's removal would affect a close family member who is serving or has served in the Armed Forces.

"(C) The length of time the alien has lived in the United States.

"(D) The degree to which the alien would be impacted by his or her removal from the United States.

"(E) The existence of close family ties within the United States.

"(F) The degree to which the alien's removal would adversely affect the alien's United States citizen, or lawful permanent resident, parents, spouses, children, sons, daughters, or siblings.

"(G) The alien's history of employment in the United States, including whether the alien has been self-employed or has owned a business.

"(H) The degree to which the alien's removal would adversely affect the aliens United States employer or business.

"(I) The degree to which the alien has ties to the alien's community in the United States or has contributed to the Nation through community, volunteer, or other activities.".

SEC. 6. TIMELY REUNIFICATION OF MILITARY PERSONNEL AND THEIR NUCLEAR FAMILIES.

Section 201(b)(1) of the Immigration and Nationality Act (8 U.S.C. 1151(b)(1)) is amended by adding at the end the following:

"(F) Aliens who are eligible for an immigrant visa under paragraph (2)(A) of section 203(a) and are either the spouse or child of an alien who is serving in the Armed Forces of the United States.".

SEC. 7. RELIEF FOR IMMEDIATE FAMILY MEMBERS OF ACTIVE DUTY PERSONNEL.

(a) IN GENERAL.—The Secretary of Homeland Security shall adjust the status of an alien described in subsection (b) to that of an alien lawfully admitted for permanent residence if the alien—

(1) applies for such adjustment, and is physically present in the United States on the date the application is filed;

(2) is admissible to the United States as an immigrant, except as provided in subsection (d); and

(3) pays a fee, as determined by the Secretary, for the processing of such application.

(b) ELIGIBLE ALIENS.—

(1) IN GENERAL.—The benefits provided in subsection (a) shall apply only to an alien who is a parent, spouse, child, son or daughter, or minor sibling of an eligible member of the Armed Forces, as defined in subsection (c).

(2) POSTHUMOUS BENEFITS.—An alien described in paragraph (1) shall continue to be eligible for adjustment under this section for 2 years after the death of an eligible member of the Armed Forces whose death was the result of injury or disease incurred in or aggravated by his or her service in the Armed Forces.

(c) ELIGIBLE MEMBERS OF THE ARMED FORCES.—In this section, "eligible member of the Armed Forces" means any person who—

(1) is serving or has served honorably as a member of the Selected Reserve of the Ready Reserve or in an active-duty status in the military, air, or naval forces of the United States during a period beginning February 28, 1961, and ending on a date designated by the President by Executive order as of the date of termination of the Vietnam hostilities, or thereafter during any other period which the President by Executive order shall designate as a period in which Armed Forces of the United States are or were engaged in military operations involving armed conflict with a hostile foreign force; and

(2) if separated from the service described in paragraph (1), was separated under honorable conditions.

(d) WAIVER OF CERTAIN GROUNDS OF INADMISSIBILITY.—For the purpose of adjustment of status under this section:

(1) Paragraphs (4), (5), (6)(A), (7)(A), and (9)(B) of section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)) shall not apply.

(2) The Secretary of Homeland Security, or the Attorney General, shall not waive the following provisions of section 212 of the Immigration and Nationality Act (8 U.S.C. 1182):

(A) Subsection (a)(2)(B), if the alien actually was incarcerated for 5 years or more for the offenses described in such subsection.

(B) Subparagraph (C), (D), (G), or (H) of subsection (a)(2).

(C) Subparagraph (A), (B), (C), (E), or (F) of subsection (a)(3).
(D) Subsection (a)(6)(E).
(E) Subparagraph (A) or (C) of subsection (a)(10).
(F) Subsection (a)(10)(D), if the alien has received a conviction, award, compromise, settlement, or injunction for an offense described in clause (i) of such subsection, and if the court finds that the alien did not reasonably believe at the time such violation that the alien was a citizen.

(3) The Secretary of Homeland Security, or the Attorney General, may waive any other provision of section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)) for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest.

PURPOSE AND SUMMARY

To ensure U.S. military readiness, H.R. 6020 addresses immigration problems that distract active-duty soldiers in battle, as well as veterans, and their immediate families.

BACKGROUND AND NEED FOR THE LEGISLATION

According to retired Lieutenant General Ricardo Sanchez, the former military commander for ground forces in the Iraq War, "[w]e should not continue to allow our citizenship laws and immigration bureaucracy to put our war-fighting readiness at risk." In addition, Lt. Gen. Sanchez stated, "[w]hen soldiers have to worry about their families, individual readiness falters—which can lead to degradation in unit effectiveness and the risk of mission failure."

The Congressional Research Service reports that more than 45,000 non-citizens were serving in the United States Armed Forces (Air Force, Army, Marines, Navy, National Guard, Reserves) as of March 2007. In addition, many U.S. citizens serving in the military have close non-citizen family members. Such individuals represent a significant portion of U.S. Armed Forces, and they often face daunting and complex immigration law and procedure.

The following identifies some of the more common immigration problems experienced by our fighting men and women, as well as their families. These and other problems are addressed by H.R. 6020.

CONDITIONAL PERMANENT RESIDENTS

Under current law, an individual who receives permanent residence based on his or her marriage to a U.S. citizen has a condition placed on his or her "green card" if the couple has been married for less than 2 years at the time that the non-citizen spouse becomes a permanent resident. The conditional permanent resident and the U.S. citizen spouse must then file a joint petition within 90 days of the 2-year anniversary of the date on which the spouse obtained residency, and they must attend an in-person interview to remove the condition.

To meet these legal requirements, active duty personnel are often required to take time off from their military mission. In addition, due to constant movement required by the U.S. military, they often fail to receive timely notice of further action from the agency handling the immigration matters, thereby exposing them to further stress of failing to meet legal requirements that could place them or their families in deportation proceedings.

For example, Airman Karla Rivera, a conditional permanent resident who is currently serving in the Navy, was in training when

she was supposed to file the petition to remove the condition on her permanent residence. When she consulted the Naval Legal Service Office after she completed boot camp, she was told that she should apply for U.S. citizenship based on her military service rather than file for removal of condition. In the meantime, United States Citizenship and Immigration Services (USCIS) terminated her conditional permanent residence and placed Airman Rivera in removal proceedings.

Despite the fact that she had to move from California to Virginia as a result of being posted to a ship docked in Norfolk, she had to appear at an Immigration Court in California, rather than in Virginia. Furthermore, although she was eligible for U.S. citizenship based on her military service, United States Immigration and Customs Enforcement (ICE) refused to terminate her removal proceedings and let USCIS adjudicate her naturalization application until she was scheduled to testify before the Committee's Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law. Airman Rivera finally became a U.S. citizen on May 27, 2008, a week after she testified before the Subcommittee about her immigration problems.

U.S. CITIZEN SOLDIERS WITH UNDOCUMENTED FAMILY MEMBERS

Under current law, undocumented spouses, children, parents, or young siblings of U.S. citizen soldiers have no way to gain legal status in the United States. Even if an immigrant visa is available for such a family member, they must first leave the country to apply for and receive an extreme hardship waiver, which may or may not be granted. Furthermore, even if such a waiver is granted, the family member must wait outside the United States while the waiver is being processed, which can take a year or longer. If the waiver is denied, the family member will normally be barred from coming to the United States, in any status, for 10 years. The family member may be permanently barred if they are also subject to other grounds of inadmissibility that arise from their undocumented status.

Army Specialist Angel Rodriguez describes the problems he faced in serving our nation as a soldier while his undocumented wife was facing potential deportation: "I joined the Army and I take pride in what I do, . . . [b]ut it's hard being away and defending a country that doesn't want your family." Another soldier married to a woman who entered the country illegally when she was just 5 years old said, "If I'm willing to die for the United States, why can't I just be allowed to be with my family?"

Most U.S. citizen or lawful permanent resident soldiers with close family members who are inadmissible or deportable lack the opportunity to demonstrate how they would be impacted were their families deported or unable to join them in the United States. For example, Christine Navarro, a U.S. citizen aircraft commander pilot with the U.S. Air Force, has been permanently separated from her husband, Jose Navarro, since November 2006, because the American Consulate in Ciudad Juarez denied his application for an immigrant visa based on an oral claim to U.S. citizenship that he made years ago. She told the Committee that she was having a hard time choosing between her duty to her nation and her duty to her family.

She is now a de facto single parent, taking care of their 3-year-old son with cerebral palsy and flying missions to the Persian Gulf without the help of her husband, who is now living in Mexico. There is no waiver available for Captain Navarro and her family, despite the personal and professional impact it is having on her and on her U.S. citizen child.

LAWFUL PERMANENT RESIDENT SOLDIERS AND VETERANS

As a result of the restrictions enacted in 1996, many non-citizens who become deportable can no longer apply for relief from deportation based on the individual equities in their cases, even for soldiers and their families who are distracted from their military mission when faced with potential deportation.[1] This is the case even for long-term lawful permanent residents who are serving or have served in the U.S. military.

For example, Joe Desiré, a lawful permanent resident for more than 40 years, served in the military and was deployed to Vietnam in the 1970's. While in the military, he developed a drug problem that led to drug-related convictions. Mr. Desiré, however, overcame his addiction and has been clean of drugs for more than 10 years. He now has four U.S. citizen sons, two of whom are serving in the military. Despite his rehabilitation and his service to this country, as well as the service of his sons, he faces mandatory deportation to Haiti without an opportunity to go before an Immigration Judge to appeal for discretionary relief.

HEARINGS

The Committee's Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law held 1 day of hearings on the "Immigration Needs of America's Fighting Men and Women" on May 20, 2008. The Subcommittee received testimony from Lt. Col. Margaret Stock (Military Police Corps, U.S. Army Reserve); Airman Karla Rivera (U.S. Navy); Capt. Christine Navarro (U.S. Air Force); Lt. Gen. (retired) Edward Baca, on behalf of the American GI Forum; and Mark Seavey, Assistant Director of the National Legislative Commission, American Legion.

COMMITTEE CONSIDERATION

On July 31, 2008, the Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law met in open session and ordered the bill H.R. 6020 favorably reported, with an amendment, by a vote of 6 to 3, a quorum being present. On September 10 and 17, 2008, the Committee met in open session to consider H.R. 6020, and on September 17 ordered the bill favorably reported with an amendment, by a rollcall vote of 16 to 12, a quorum being present.

COMMITTEE VOTES

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that the following rollcall votes occurred during the Committee's consideration of H.R. 6020:

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[1] P.L. 104–132, 110 Stat. 1214 (Apr. 24, 1996); P.L. 104–193, 110 Stat. 2105 (Aug. 22 1996)

1. An amendment offered by Mr. Smith to strike section 5 of the bill, which permits eligible soldiers, honorably discharged veterans, and close family members to apply for discretionary waivers of certain grounds of inadmissibility or deportability. Failed by a vote of 13–17.

ROLLCALL NO. 1

	Ayes	Nays	Present
Mr. Conyers, Jr., Chairman		X	
Mr. Berman		X	
Mr. Boucher			
Mr. Nadler		X	
Mr. Scott			
Mr. Watt		X	
Ms. Lofgren		X	
Ms. Jackson Lee		X	
Ms. Waters			
Mr. Delahunt		X	
Mr. Wexler		X	
Ms. Sánchez		X	
Mr. Cohen		X	
Mr. Johnson		X	
Ms. Sutton			
Mr. Gutierrez		X	
Mr. Sherman			
Ms. Baldwin		X	
Mr. Weiner			
Mr. Schiff		X	
Mr. Davis		X	
Ms. Wasserman Schultz		X	
Mr. Ellison		X	
Mr. Smith, Ranking Member	X		
Mr. Sensenbrenner, Jr.			
Mr. Coble	X		
Mr. Gallegly	X		
Mr. Goodlatte	X		
Mr. Chabot	X		
Mr. Lungren	X		
Mr. Cannon			
Mr. Keller	X		
Mr. Issa	X		
Mr. Pence			
Mr. Forbes	X		
Mr. King	X		
Mr. Feeney	X		
Mr. Franks	X		
Mr. Gohmert			
Mr. Jordan	X		
Total	13	17	

2. An amendment offered by Mr. Smith to strike Subsection 3(a) of the bill, which prior to an amendment offered by Ms. Lofgren and accepted by voice vote, would have exempted soldiers with conditional permanent residence from having to remove the condition on their permanent residence. Failed by a vote of 13–15.

ROLLCALL NO. 2

	Ayes	Nays	Present
Mr. Conyers, Jr., Chairman		X	
Mr. Berman		X	
Mr. Boucher			

ROLLCALL NO. 2—Continued

	Ayes	Nays	Present
Mr. Nadler		X	
Mr. Scott			
Mr. Watt		X	
Ms. Lofgren		X	
Ms. Jackson Lee		X	
Ms. Waters			
Mr. Delahunt			
Mr. Wexler		X	
Ms. Sánchez		X	
Mr. Cohen		X	
Mr. Johnson		X	
Ms. Sutton			
Mr. Gutierrez		X	
Mr. Sherman		X	
Ms. Baldwin			
Mr. Weiner			
Mr. Schiff		X	
Mr. Davis		X	
Ms. Wasserman Schultz			
Mr. Ellison		X	
Mr. Smith, Ranking Member	X		
Mr. Sensenbrenner, Jr.			
Mr. Coble	X		
Mr. Gallegly	X		
Mr. Goodlatte	X		
Mr. Chabot	X		
Mr. Lungren	X		
Mr. Cannon			
Mr. Keller	X		
Mr. Issa	X		
Mr. Pence			
Mr. Forbes	X		
Mr. King	X		
Mr. Feeney	X		
Mr. Franks	X		
Mr. Gohmert			
Mr. Jordan	X		
Total	13	15	

3. An amendment offered by Mr. Smith to bar soldiers, veterans, and their immediate family members from applying for individualized consideration of their cases if the applicant is deportable for a domestic violence conviction or violation of a protection order. Failed by a vote of 8–15.

ROLLCALL NO. 3

	Ayes	Nays	Present
Mr. Conyers, Jr., Chairman		X	
Mr. Berman			
Mr. Boucher			
Mr. Nadler		X	
Mr. Scott		X	
Mr. Watt			
Ms. Lofgren		X	
Ms. Jackson Lee			
Ms. Waters		X	
Mr. Delahunt		X	
Mr. Wexler		X	
Ms. Sánchez		X	
Mr. Cohen		X	

ROLLCALL NO. 3—Continued

	Ayes	Nays	Present
Mr. Johnson			
Ms. Sutton			
Mr. Gutierrez		X	
Mr. Sherman		X	
Ms. Baldwin		X	
Mr. Weiner		X	
Mr. Schiff			
Mr. Davis	X		
Ms. Wasserman Schultz			
Mr. Ellison		X	
Mr. Smith, Ranking Member	X		
Mr. Sensenbrenner, Jr.			
Mr. Coble			
Mr. Gallegly	X		
Mr. Goodlatte	X		
Mr. Chabot	X		
Mr. Lungren			
Mr. Cannon		X	
Mr. Keller			
Mr. Issa	X		
Mr. Pence			
Mr. Forbes			
Mr. King	X		
Mr. Feeney			
Mr. Franks	X		
Mr. Gohmert			
Mr. Jordan			
Total	8	15	

4. An amendment offered by Mr. King to bar soldiers, veterans, and their immediate family members from applying for individualized consideration of their cases if the applicant is inadmissible for a crime involving moral turpitude or a controlled substance violation, or deportable for more than one criminal conviction. Failed 8–15.

ROLLCALL NO. 4

	Ayes	Nays	Present
Mr. Conyers, Jr., Chairman		X	
Mr. Berman			
Mr. Boucher			
Mr. Nadler		X	
Mr. Scott		X	
Mr. Watt		X	
Ms. Lofgren		X	
Ms. Jackson Lee			
Ms. Waters			
Mr. Delahunt		X	
Mr. Wexler			
Ms. Sánchez		X	
Mr. Cohen		X	
Mr. Johnson			
Ms. Sutton			
Mr. Gutierrez		X	
Mr. Sherman			
Ms. Baldwin		X	
Mr. Weiner		X	
Mr. Schiff		X	
Mr. Davis			
Ms. Wasserman Schultz		X	

ROLLCALL NO. 4—Continued

	Ayes	Nays	Present
Mr. Ellison		X	
Mr. Smith, Ranking Member	X		
Mr. Sensenbrenner, Jr.			
Mr. Coble	X		
Mr. Gallegly	X		
Mr. Goodlatte	X		
Mr. Chabot	X		
Mr. Lungren			
Mr. Cannon		X	
Mr. Keller			
Mr. Issa	X		
Mr. Pence			
Mr. Forbes			
Mr. King	X		
Mr. Feeney			
Mr. Franks	X		
Mr. Gohmert			
Mr. Jordan			
Total	8	15	

5. An amendment offered by Mr. Smith to bar soldiers, veterans, and their immediate family members from applying for individualized consideration of their cases if the applicant is deportable for an offense that involves fraud or deceit in which the loss exceeds $10,000. Failed by a vote of 7–10.

ROLLCALL NO. 5

	Ayes	Nays	Present
Mr. Conyers, Jr., Chairman		X	
Mr. Berman			
Mr. Boucher			
Mr. Nadler		X	
Mr. Scott		X	
Mr. Watt			
Ms. Lofgren		X	
Ms. Jackson Lee			
Ms. Waters		X	
Mr. Delahunt			
Mr. Wexler			
Ms. Sánchez		X	
Mr. Cohen			
Mr. Johnson			
Ms. Sutton			
Mr. Gutierrez		X	
Mr. Sherman			
Ms. Baldwin		X	
Mr. Weiner		X	
Mr. Schiff		X	
Mr. Davis			
Ms. Wasserman Schultz			
Mr. Ellison			
Mr. Smith, Ranking Member	X		
Mr. Sensenbrenner, Jr.			
Mr. Coble	X		
Mr. Gallegly	X		
Mr. Goodlatte	X		
Mr. Chabot	X		
Mr. Lungren			
Mr. Cannon			
Mr. Keller			

ROLLCALL NO. 5—Continued

	Ayes	Nays	Present
Mr. Issa	X		
Mr. Pence			
Mr. Forbes			
Mr. King	X		
Mr. Feeney			
Mr. Franks			
Mr. Gohmert			
Mr. Jordan			
Total	7	10	

6. An amendment offered by Mr. Issa to require active-duty Reserve members to petition for removal of condition on their permanent residence if they are in training at the time that they must file the petition to remove the condition. Failed by a vote of 8–15.

ROLLCALL NO. 6

	Ayes	Nays	Present
Mr. Conyers, Jr., Chairman		X	
Mr. Berman			
Mr. Boucher			
Mr. Nadler		X	
Mr. Scott		X	
Mr. Watt		X	
Ms. Lofgren		X	
Ms. Jackson Lee			
Ms. Waters		X	
Mr. Delahunt			
Mr. Wexler			
Ms. Sánchez		X	
Mr. Cohen		X	
Mr. Johnson			
Ms. Sutton		X	
Mr. Gutierrez		X	
Mr. Sherman			
Ms. Baldwin		X	
Mr. Weiner		X	
Mr. Schiff		X	
Mr. Davis			
Ms. Wasserman Schultz		X	
Mr. Ellison			
Mr. Smith, Ranking Member	X		
Mr. Sensenbrenner, Jr.			
Mr. Coble	X		
Mr. Gallegly	X		
Mr. Goodlatte	X		
Mr. Chabot	X		
Mr. Lungren			
Mr. Cannon		X	
Mr. Keller			
Mr. Issa	X		
Mr. Pence			
Mr. Forbes			
Mr. King	X		
Mr. Feeney			
Mr. Franks	X		
Mr. Gohmert			
Mr. Jordan			
Total	8	15	

7. An amendment offered by Mr. Smith to bar soldiers, veterans, and their immediate family members from applying for individualized consideration of their cases if the applicant is deportable for an offense relating to a failure to appear by a defendant for service of sentence where the underlying offense is punishable by imprisonment of five or more years. Failed by a vote of 10–12.

ROLLCALL NO. 7

	Ayes	Nays	Present
Mr. Conyers, Jr., Chairman		X	
Mr. Berman		X	
Mr. Boucher			
Mr. Nadler			
Mr. Scott		X	
Mr. Watt		X	
Ms. Lofgren		X	
Ms. Jackson Lee			
Ms. Waters			
Mr. Delahunt			
Mr. Wexler			
Ms. Sánchez		X	
Mr. Cohen		X	
Mr. Johnson		X	
Ms. Sutton			
Mr. Gutierrez			
Mr. Sherman			
Ms. Baldwin		X	
Mr. Weiner		X	
Mr. Schiff			
Mr. Davis			
Ms. Wasserman Schultz		X	
Mr. Ellison		X	
Mr. Smith, Ranking Member	X		
Mr. Sensenbrenner, Jr.			
Mr. Coble	X		
Mr. Gallegly			
Mr. Goodlatte			
Mr. Chabot			
Mr. Lungren	X		
Mr. Cannon			
Mr. Keller	X		
Mr. Issa	X		
Mr. Pence			
Mr. Forbes	X		
Mr. King	X		
Mr. Feeney	X		
Mr. Franks	X		
Mr. Gohmert			
Mr. Jordan	X		
Total	10	12	

8. An amendment offered by Mr. Smith to bar soldiers, veterans, and their immediate family members from applying for individualized consideration of their cases if the applicant is deportable for a gambling offense. Failed by a vote of 11–13.

ROLLCALL NO. 8

	Ayes	Nays	Present
Mr. Conyers, Jr., Chairman		X	
Mr. Berman		X	
Mr. Boucher			

ROLLCALL NO. 8—Continued

	Ayes	Nays	Present
Mr. Nadler			
Mr. Scott		X	
Mr. Watt		X	
Ms. Lofgren		X	
Ms. Jackson Lee		X	
Ms. Waters			
Mr. Delahunt			
Mr. Wexler			
Ms. Sánchez		X	
Mr. Cohen		X	
Mr. Johnson		X	
Ms. Sutton			
Mr. Gutierrez			
Mr. Sherman			
Ms. Baldwin		X	
Mr. Weiner		X	
Mr. Schiff			
Mr. Davis			
Ms. Wasserman Schultz		X	
Mr. Ellison		X	
Mr. Smith, Ranking Member	X		
Mr. Sensenbrenner, Jr.			
Mr. Coble	X		
Mr. Gallegly	X		
Mr. Goodlatte			
Mr. Chabot	X		
Mr. Lungren	X		
Mr. Cannon			
Mr. Keller	X		
Mr. Issa			
Mr. Pence			
Mr. Forbes	X		
Mr. King	X		
Mr. Feeney			
Mr. Franks	X		
Mr. Gohmert	X		
Mr. Jordan	X		
Total	11	13	

9. An amendment offered by Mr. King to bar soldiers, veterans, and their immediate family members from applying for individualized consideration of their cases if the applicant is deportable for a theft or burglary offense for which the term of imprisonment is at least 1 year. Failed by a vote of 11–15.

ROLLCALL NO. 9

	Ayes	Nays	Present
Mr. Conyers, Jr., Chairman		X	
Mr. Berman		X	
Mr. Boucher			
Mr. Nadler			
Mr. Scott		X	
Mr. Watt		X	
Ms. Lofgren		X	
Ms. Jackson Lee		X	
Ms. Waters			
Mr. Delahunt		X	
Mr. Wexler			
Ms. Sánchez		X	
Mr. Cohen		X	

ROLLCALL NO. 9—Continued

	Ayes	Nays	Present
Mr. Johnson		X	
Ms. Sutton			
Mr. Gutierrez		X	
Mr. Sherman			
Ms. Baldwin		X	
Mr. Weiner		X	
Mr. Schiff			
Mr. Davis			
Ms. Wasserman Schultz		X	
Mr. Ellison		X	
Mr. Smith, Ranking Member	X		
Mr. Sensenbrenner, Jr.			
Mr. Coble	X		
Mr. Gallegly	X		
Mr. Goodlatte			
Mr. Chabot	X		
Mr. Lungren	X		
Mr. Cannon			
Mr. Keller	X		
Mr. Issa			
Mr. Pence			
Mr. Forbes	X		
Mr. King	X		
Mr. Feeney			
Mr. Franks	X		
Mr. Gohmert	X		
Mr. Jordan	X		
Total	11	15	

10. An amendment offered by Mr. King to bar soldiers, veterans, and their immediate family members from applying for individualized consideration of their cases if the applicant is deportable for a crime of violence for which the term of imprisonment is at least 1 year. Failed by a vote of 11–15.

ROLLCALL NO. 10

	Ayes	Nays	Present
Mr. Conyers, Jr., Chairman		X	
Mr. Berman			
Mr. Boucher			
Mr. Nadler			
Mr. Scott		X	
Mr. Watt		X	
Ms. Lofgren		X	
Ms. Jackson Lee		X	
Ms. Waters		X	
Mr. Delahunt		X	
Mr. Wexler			
Ms. Sánchez		X	
Mr. Cohen		X	
Mr. Johnson		X	
Ms. Sutton			
Mr. Gutierrez		X	
Mr. Sherman			
Ms. Baldwin		X	
Mr. Weiner		X	
Mr. Schiff			
Mr. Davis			
Ms. Wasserman Schultz		X	
Mr. Ellison			

ROLLCALL NO. 10—Continued

	Ayes	Nays	Present
Mr. Smith, Ranking Member	X		
Mr. Sensenbrenner, Jr.			
Mr. Coble	X		
Mr. Gallegly	X		
Mr. Goodlatte			
Mr. Chabot	X		
Mr. Lungren	X		
Mr. Cannon		X	
Mr. Keller	X		
Mr. Issa			
Mr. Pence			
Mr. Forbes	X		
Mr. King	X		
Mr. Feeney			
Mr. Franks	X		
Mr. Gohmert	X		
Mr. Jordan	X		
Total	11	15	

11. An amendment offered by Mr. Lungren to deny benefits under this bill to veterans who were discharged "under honorable conditions" by replacing the term with "with an honorable discharge." Failed by a vote of 12–15.

ROLLCALL NO. 11

	Ayes	Nays	Present
Mr. Conyers, Jr., Chairman		X	
Mr. Berman		X	
Mr. Boucher			
Mr. Nadler		X	
Mr. Scott		X	
Mr. Watt		X	
Ms. Lofgren		X	
Ms. Jackson Lee			
Ms. Waters			
Mr. Delahunt			
Mr. Wexler			
Ms. Sánchez		X	
Mr. Cohen		X	
Mr. Johnson		X	
Ms. Sutton			
Mr. Gutierrez		X	
Mr. Sherman			
Ms. Baldwin		X	
Mr. Weiner		X	
Mr. Schiff		X	
Mr. Davis			
Ms. Wasserman Schultz		X	
Mr. Ellison		X	
Mr. Smith, Ranking Member	X		
Mr. Sensenbrenner, Jr.			
Mr. Coble	X		
Mr. Gallegly	X		
Mr. Goodlatte	X		
Mr. Chabot	X		
Mr. Lungren	X		
Mr. Cannon	X		
Mr. Keller			
Mr. Issa	X		
Mr. Pence			
Mr. Forbes	X		

ROLLCALL NO. 11—Continued

	Ayes	Nays	Present
Mr. King	X		
Mr. Feeney			
Mr. Franks			
Mr. Gohmert	X		
Mr. Jordan	X		
Total	12	15	

12. An amendment offered by Mr. Smith to allow soldiers and veterans to be deported from the United States without first being able to appear before an Immigration Judge. Failed by a vote of 11–17.

ROLLCALL NO. 12

	Ayes	Nays	Present
Mr. Conyers, Jr., Chairman		X	
Mr. Berman		X	
Mr. Boucher			
Mr. Nadler		X	
Mr. Scott		X	
Mr. Watt		X	
Ms. Lofgren		X	
Ms. Jackson Lee			
Ms. Waters			
Mr. Delahunt			
Mr. Wexler			
Ms. Sánchez		X	
Mr. Cohen		X	
Mr. Johnson		X	
Ms. Sutton			
Mr. Gutierrez		X	
Mr. Sherman			
Ms. Baldwin		X	
Mr. Weiner		X	
Mr. Schiff		X	
Mr. Davis			
Ms. Wasserman Schultz		X	
Mr. Ellison		X	
Mr. Smith, Ranking Member	X		
Mr. Sensenbrenner, Jr.			
Mr. Coble	X		
Mr. Gallegly	X		
Mr. Goodlatte	X		
Mr. Chabot	X		
Mr. Lungren		X	
Mr. Cannon		X	
Mr. Keller	X		
Mr. Issa	X		
Mr. Pence			
Mr. Forbes	X		
Mr. King	X		
Mr. Feeney			
Mr. Franks			
Mr. Gohmert	X		
Mr. Jordan	X		
Total	11	17	

13. The Committee considered an amendment offered by Mr. Issa to deny benefits under this bill to parents, children over 21,

and minor siblings of U.S. soldiers and veterans. Failed by a vote of 10–16.

ROLLCALL NO. 13

	Ayes	Nays	Present
Mr. Conyers, Jr., Chairman		X	
Mr. Berman		X	
Mr. Boucher			
Mr. Nadler			
Mr. Scott		X	
Mr. Watt		X	
Ms. Lofgren		X	
Ms. Jackson Lee			
Ms. Waters			
Mr. Delahunt			
Mr. Wexler		X	
Ms. Sánchez		X	
Mr. Cohen		X	
Mr. Johnson		X	
Ms. Sutton			
Mr. Gutierrez		X	
Mr. Sherman			
Ms. Baldwin		X	
Mr. Weiner		X	
Mr. Schiff		X	
Mr. Davis			
Ms. Wasserman Schultz		X	
Mr. Ellison		X	
Mr. Smith, Ranking Member	X		
Mr. Sensenbrenner, Jr.			
Mr. Coble	X		
Mr. Gallegly	X		
Mr. Goodlatte	X		
Mr. Chabot	X		
Mr. Lungren	X		
Mr. Cannon		X	
Mr. Keller	X		
Mr. Issa	X		
Mr. Pence			
Mr. Forbes	X		
Mr. King	X		
Mr. Feeney			
Mr. Franks			
Mr. Gohmert			
Mr. Jordan			
Total	10	16	

14. An amendment offered by Mr. King to bar soldiers, veterans, and their immediate family members from applying for individualized consideration of their cases if the applicant is inadmissible for not having relevant documentation at the time of admission to the United States or having accrued unlawful presence in the United States. Failed by a vote of 11–16.

ROLLCALL NO. 14

	Ayes	Nays	Present
Mr. Conyers, Jr., Chairman		X	
Mr. Berman		X	
Mr. Boucher			
Mr. Nadler		X	
Mr. Scott		X	
Mr. Watt		X	

ROLLCALL NO. 14—Continued

	Ayes	Nays	Present
Ms. Lofgren		X	
Ms. Jackson Lee			
Ms. Waters		X	
Mr. Delahunt			
Mr. Wexler			
Ms. Sánchez		X	
Mr. Cohen		X	
Mr. Johnson		X	
Ms. Sutton			
Mr. Gutierrez		X	
Mr. Sherman			
Ms. Baldwin			
Mr. Weiner		X	
Mr. Schiff		X	
Mr. Davis			
Ms. Wasserman Schultz		X	
Mr. Ellison		X	
Mr. Smith, Ranking Member	X		
Mr. Sensenbrenner, Jr.			
Mr. Coble	X		
Mr. Gallegly	X		
Mr. Goodlatte	X		
Mr. Chabot	X		
Mr. Lungren			
Mr. Cannon		X	
Mr. Keller	X		
Mr. Issa	X		
Mr. Pence			
Mr. Forbes	X		
Mr. King	X		
Mr. Feeney			
Mr. Franks			
Mr. Gohmert	X		
Mr. Jordan	X		
Total	11	16	

15. The Committee reported the bill favorably to the House by a vote of 16–12.

ROLLCALL NO. 15

	Ayes	Nays	Present
Mr. Conyers, Jr., Chairman	X		
Mr. Berman	X		
Mr. Boucher			
Mr. Nadler	X		
Mr. Scott	X		
Mr. Watt	X		
Ms. Lofgren	X		
Ms. Jackson Lee			
Ms. Waters	X		
Mr. Delahunt			
Mr. Wexler			
Ms. Sánchez	X		
Mr. Cohen	X		
Mr. Johnson	X		
Ms. Sutton			
Mr. Gutierrez	X		
Mr. Sherman			
Ms. Baldwin			
Mr. Weiner	X		
Mr. Schiff	X		

ROLLCALL NO. 15—Continued

	Ayes	Nays	Present
Mr. Davis			
Ms. Wasserman Schultz	X		
Mr. Ellison	X		
Mr. Smith, Ranking Member		X	
Mr. Sensenbrenner, Jr.			
Mr. Coble		X	
Mr. Gallegly		X	
Mr. Goodlatte		X	
Mr. Chabot		X	
Mr. Lungren		X	
Mr. Cannon	X		
Mr. Keller		X	
Mr. Issa		X	
Mr. Pence			
Mr. Forbes		X	
Mr. King		X	
Mr. Feeney			
Mr. Franks			
Mr. Gohmert		X	
Mr. Jordan		X	
Total	16	12	

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

COMMITTEE COST ESTIMATE

A Congressional Budget Office (CBO) estimate of the costs of implementing H.R. 6020 as reported by the Committee on the Judiciary was not available as of the time of filing this report. Nor was any useful agency estimate of these costs available.

In compliance with clause 3(d)(2) of rule XIII of the Rules of the House of Representatives, the Committee estimates the costs as follows:

Cost to the Federal Government

The Committee does not anticipate that the bill will have any significant effect on the Federal budget in terms of the immigration cases themselves. The bill would simply make additional persons eligible to apply for individualized consideration of their immigration cases. The Committee expects that the cases of those who do so apply can be handled with existing resources.

Data as to the number of beneficiaries who would be eligible to, and who would elect to, apply for the immigration benefits provided under the bill is not available. However, the Committee believes

that the bill may increase certain costs to the Federal Government relating to programs in which legal immigrants and citizens may become eligible to participate. These costs would recur annually and indefinitely, and could be expected to vary from year to year, and to be offset, partially or fully, by increased income tax revenue as the persons involved become legally entitled to work in the United States. It is not practicable, at this time, to estimate the net costs to the Federal Government.

PERFORMANCE GOALS AND OBJECTIVES

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 6020 will alleviate some of the most common and recurring immigration problems that are affecting military readiness of the U.S. Armed Forces. It would do so by ensuring that active-duty soldiers serving honorably, veterans who have been honorably discharged, and their close family members do not face problems with applying for naturalization, that they have an opportunity to bring and keep their families together, and they do not face unnecessary and insurmountable obstacles in deportation proceedings.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in article 1, section 8, clause 4 of the Constitution.

ADVISORY ON EARMARKS

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 6020 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of rule XXI.

AGENCY VIEWS

SEP 17 2008

Office of Legislative Affairs
U.S. Department of Homeland Security
Washington, DC 20528

Homeland Security

The Honorable John Conyers
Chairman
Committee on Judiciary
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

The Department of Homeland Security (DHS) appreciates the opportunity to comment on H.R. 6020, the "Lance Corporal Jose Gutierrez Act of 2008," as reported by the House Committee on the Judiciary's Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law. While DHS appreciates the sacrifices and contributions made by aliens who have served honorably in the U.S. Armed Forces and shares the goal of facilitating the naturalization of such aliens and the lawful immigration of their eligible family members, the Department has numerous serious concerns about H.R. 6020 and the Department cannot support its enactment.

Subsection 2(a) of the bill would provide that any person who served honorably as a member of the U.S. Armed Forces in support of contingency operations[1] is eligible for naturalization under section 329 of the Immigration and Nationality Act (INA) as if the person had served during a period of presidentially-designated military hostilities. The Department believe that the distinction the INA currently draws between periods of military hostilities qualifying for the expedited wartime naturalization provision under section 329 and the regular military naturalization provision (section 328) for contingency operations and other military service short of designated periods of hostilities is appropriate and should be retained. Subsection 2(a) of the bill also would create the anomaly that those who serve in a contingency

[1] A contingency operation is defined in 10 U.S.C. § 101(a)(13) as a military operation that--

(A) is designated by the Secretary of Defense as an operation in which members of the armed forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force; or

(B) results in the call or order to, or retention on, active duty of members of the uniformed services under section 688, 12301(a), 12302, 12304, 12305, or 12406 of this title, chapter 15 of this title, or any other provision of law during a war or during a national emergency declared by the President or Congress.

operation short of war are directly eligible for naturalization by statute, while service members who serve in any post-Vietnam era actual war are eligible for naturalization only if the conflict is designated by Executive Order. If this provision were retained in the bill (which the Department would not support), it should at a minimum confer on those who serve during actual hostilities the same benefit conferred on those who serve during contingency operations, by similarly requiring that eligibility based on a contingency operation be based upon a Presidential designation by Executive Order. This change also could assist in clarifying which military activities qualify "contingency operations." It is our understanding that a military operation can be a Secretary of Defense-designated contingency operation or it can become a contingency operation by law by virtue of a military personnel action that takes place to respond to a disaster, humanitarian relief, or other need. Secretary of Defense-designated "contingency operations" are rarely used and are limited to operations with a view toward an enemy or opposing military force. By-law designations result from automatic actions that call or order to active duty, or retain on active duty, members of the uniformed military services under other stated provisions of title 10 of the United States Code. It may prove difficult to confirm duty served during a contingency operation created by operation of law.

Subsection 2(b) would extend the period for filing a naturalization application after completion of eligible military service under section 328 of the INA from six months to one year. The Department supports this change. However, the Department objects to section 2(b)'s deletion of the INA's current requirements of "good moral character, attachment to the principles of the Constitution of the United States, and favorable disposition toward the good order and happiness of the United States" for veterans applying for naturalization under section 328 of the INA. While the Department honors the service of veterans, being a veteran alone should not excuse failure to comply after discharge with the most basic requirements for citizenship.

Section 3 of the bill would provide that spouses (and the sons and daughters) of members or veterans of the Armed Forces who have served honorably for at least one year are not subject to the general requirement of INA section 216 that lawful permanent residence granted by reason of marriage is a conditional status, subject to the removal of conditions after two years. The conditional requirements provide substantial protection against immigration-based marriage fraud for both the public and for the spouses themselves. It is unclear why these protections should be removed for certain family members of military personnel who may, due to their youth and foreign deployments, be particularly vulnerable to this type of fraud. Section 3 also removes interview requirements for current members of the Armed Forces. Because the bill would exempt members of the Armed Forces with at least one year of honorable service from the conditional requirement altogether, the interview exception would appear to apply only to those members with less than one year of honorable service. As with the general exception, the

Department does not think it is necessary or appropriate to remove the anti-fraud protection of the interview requirement for those limited military cases that would continue to be conditional.

Section 4 of the bill would require prior approval by the Director of U.S. Citizenship and Immigration Services or the Assistant Secretary of U.S. Immigration and Customs Enforcement (ICE), after considering a number of mitigating factors, before initiating removal proceedings against members of the Armed Forces or veterans. The Department strongly objects to this section. DHS already takes these factors into account in determining how to exercise its enforcement discretion by initiating removal proceedings. ICE Special Agents thoroughly review the file to determine if the alien who has a record of military service is eligible for naturalization under INA sections 328 or 329 prior to the issuance of any charging document. In cases where the alien is not eligible for naturalization under those sections, Special Agents still consider military service in determining whether to initiate removal proceedings or exercise the discretion to forgo putting the alien into removal proceedings. Further, it is a basic tenet of both criminal and civil law enforcement that, absent extraordinary circumstances amounting to unconstitutional conduct, the exercise of prosecutorial discretion to bring charges in the first place should not be subject to judicial second-guessing, as opposed to the exercise of the lawful role of administrative and Article III courts to substantively adjudicate the merits of cases brought before them. Congress has explicitly protected the prosecutorial discretion of the Executive Branch in civil immigration cases by enacting section 242(g) of the INA ("no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the [Secretary of Homeland Security] to commence proceedings"); see Reno v. American-Arab Anti-Discrimination Committee, 525 U.S. 471, 483-85 (1999). Section 4 of H.R. 6020, by setting forth statutory standards for the discretionary determination to commence proceedings against removable aliens, calls this basic legal tenet into question and raises the pernicious possibility of creating a "proceeding within a proceeding," in which the issue for adjudication is not whether the alien is removable and eligible for relief under the INA, but in addition, whether a case actually should have been brought in the first place in the exercise of discretion. This would add substantial complexity and uncertainty to the adjudication of these cases, while significantly detracting from one of the most basic authorities that DHS needs in order to secure the border and protect the United States: The authority to determine which cases should be brought against removable aliens and which should not.

Additionally, section 4 would prohibit the government from reinstating orders of removal for any alien who honorably served in the U.S. Armed Services. This bar would extend even to aliens who were denied waivers of removal for serious crimes or engaged in terrorist activities before being removed. Such aliens, despite already having had the ability to litigate their immigration cases in full, would have a new opportunity and motive to seek the panoply of immigration benefits after illegally reentering the United States.

Section 5 of the bill is titled with the misnomer "discretionary relief." While it does contain broad discretionary waiver authority, the crux of this section is not discretionary in any way: Five core grounds of inadmissibility under section 212 of the INA would not apply at all to any member of the U.S. Armed Forces or the spouse, child, adult son or daughter (whether or not married), parent, or minor sibling, or to any veteran of the Armed Forces who has served honorably at any time. These exceptions include illegal entry or presence in the United States without admission or parole (INA 212(a)(6)(A)) and application for admission as an immigrant without an immigrant visa or other valid entry document (INA 212(a)(7)(A)). This provision would effectively permit the extralegal immigration of these broad classes of aliens. They would not need to meet any of the lawfully established requirements, such as a petition by a qualifying sponsor, security checks and issuance of an immigrant visa before travel to the United States, and inspection and admission as a lawful permanent resident at a port of entry, that regularize immigration and protect the Nation. If an alien arriving at a port of entry as an intending immigrant is not inadmissible because he or she does not have an immigrant visa, what is to prevent that alien simply from circumventing all lawful processes by presenting himself or herself to an inspector and demanding admission as an immigrant (LPR)? If an intending immigrant is, in addition, not inadmissible for crossing the border illegally, what would deter him or her from doing so? DHS strongly objects to provisions of law that would directly encourage illegal entry to the United States and circumvention of lawful immigration processes that protect the national security.

Section 5 also would allow aliens who have committed serious crimes to obtain waivers for those crimes, thereby making it more difficult to remove criminal aliens solely because of their prior military service. Another consequence of the criminal waiver would be the potentially adverse effect it could have on any subsequent efforts to remove an alien who has had prior criminal acts waived, yet continues criminal behavior in the United States subsequent to obtaining lawful status.

Section 6 would exempt from immigrant visa numerical limitations aliens who are eligible for family-sponsored immigrant visas and are either a spouse or child of a permanent resident alien who is serving in the U.S. Armed Forces. The Department do not see the need for this provision, as since September 11, 2001 and for the foreseeable future, lawful permanent resident members of the Armed Forces with any active-duty service are immediately eligible to naturalize under section 329 of the INA, and, once they are U.S. citizens, their spouses and children would qualify for admission as immediate relatives in any case. To provide the same benefit without naturalization would remove a current incentive for service members to obtain their citizenship, which does not serve the public interest. Furthermore, unlike section 329 of the INA, section 6 would not appear to require any active-duty service; this requirement in section

329 protects against benefits being granted prematurely, such as to an enlistee who fails to complete basic training.

Section 7 would establish an uncapped adjustment provision for various family members of service members and veterans, if they are present in the United States and admissible as immigrants. However, as with section 4, the most basic grounds of inadmissibility as an immigrant do not apply, and most of the other ones are broadly waivable. Notably, there is no requirement that the member or veteran of the Armed Forces actually petition for the immigration of his or her relative. This is contrary to the underlying principle of immigration law that, except in those limited circumstances where the putative sponsor cannot or should not determine whether or not to pursue an immigration petition (such as death of the sponsor, or domestic violence), family-based immigration is a privilege that may be exercised by the sponsor on behalf of an eligible relative in the interest of family unity if he or she so chooses, rather than the independent right of the eligible relative to immigrate to the United States. It is unclear why this basic privilege is taken away from members and veterans of the Armed Forces. As with section 6, section 7 – by requiring mere presence in the United States regardless of date of entry, while making inadmissibility for unlawful entry inapplicable – creates a strong and direct incentive for illegal migration in order to obtain the benefits of this section.

I appreciate your interest in the Department of Homeland Security, and I look forward to working with you on future homeland security issues. If I may be of further assistance, please contact the Office of Legislative Affairs at (202) 447-5890.

Sincerely,

Lee Morris

Lee C. Morris
Assistant Secretary
Office of Legislative Affairs

SECTION-BY-SECTION ANALYSIS

The following discussion describes the bill as reported by the Committee.

Sec. 1. Short title. Section 1 sets forth the short title of the bill as the "Lance Corporal Jose Gutierrez Act of 2008."

Sec. 2. Facilitating Naturalization for Military Personnel. Section 2 of the bill amends section 329 of the Immigration and Nationality Act (INA) to allow soldiers who have served honorably in dangerous operations not covered by a Presidential Executive Order to naturalize under the wartime naturalization provision of the INA. Section 2 also amends section 328 of the INA to give soldiers 1 year (rather than 6 months under current law) after their honorable discharge to apply for citizenship under the peacetime naturalization provision.

Sec. 3. Facilitating Removal of Conditional Status for Military Personnel and Their Families. Section 3 amends INA section 216 to allow conditional permanent resident soldiers to wait until they are honorably discharged before having to remove the condition on their permanent residence. For U.S. citizen soldiers who are married to conditional permanent residents, section 3 also amends INA section 216 to exempt these soldiers from having to appear at an in-person interview for their spouses' removal of condition.

Sec. 4. Factors to Consider in Initiating Removal Proceedings Against Active Duty Military Personnel or Veterans. Section 4 codifies a United States Immigration and Customs Enforcement memorandum on procedures for placing soldiers or veterans in removal proceedings. If they are placed in removal proceedings, they must be given the opportunity to appear before an Immigration Judge before being ordered deported.

Sec. 5. Discretionary Relief for Active Duty Military Personnel, Veterans, and Family Members in Removal Proceedings. Section 5 amends INA sections 212 and 237 to permit soldiers, honorably discharged veterans, and their close family members to apply for a discretionary waiver of certain grounds of inadmissibility or deportability. They would have to demonstrate their eligibility for such relief based on a multi-factor test.

Sec. 6. Timely Unification of Military Personnel and Their Nuclear Families. Section 6 facilitates the reunification of lawful permanent resident soldiers with their spouses and/or minor children by making immigrant visas immediately available for these family members.

Sec. 7. Relief for Immediate Family Members of Active Duty Personnel. Section 7 allows an undocumented parent, spouse, child, or minor sibling of U.S. citizen or lawful permanent resident soldiers and certain veterans to apply for permanent residence.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

IMMIGRATION AND NATIONALITY ACT

* * * * * * *

TITLE II—IMMIGRATION

CHAPTER 1—SELECTION SYSTEM

WORLDWIDE LEVEL OF IMMIGRATION

SEC. 201. (a) * * *

(b) ALIENS NOT SUBJECT TO DIRECT NUMERICAL LIMITATIONS.—Aliens described in this subsection, who are not subject to the worldwide levels or numerical limitations of subsection (a), are as follows:

(1)(A) * * *

* * * * * * *

(F) Aliens who are eligible for an immigrant visa under paragraph (2)(A) of section 203(a) and are either the spouse or child of an alien who is serving in the Armed Forces of the United States.

* * * * * * *

CHAPTER 2—QUALIFICATIONS FOR ADMISSION OF ALIENS; TRAVEL CONTROL OF CITIZENS AND ALIENS

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GENERAL CLASSES OF ALIENS INELIGIBLE TO RECEIVE VISAS AND INELIGIBLE FOR ADMISSION; WAIVERS OF INADMISSIBILITY

SEC. 212. (a) * * *

* * * * * * *

(c) MILITARY SERVICE PERSONNEL AND FAMILY MEMBERS.—

(1) IN GENERAL.—With respect to an alien who served honorably at any time in the Armed Forces of the United States, and who, if separated from such service, separated under honorable conditions, or an alien who is the spouse, child, son, daughter, parent, or minor sibling of a member serving in the Armed Forces of the United States—

(A) paragraphs (4), (5), (6)(A), (7)(A), and (9)(B) of subsection (a) shall not apply;

(B) the Secretary of Homeland Security, or the Attorney General, shall not waive—

(i) subsection (a)(2)(B), if the alien actually was incarcerated for 5 years or more for the offenses described in such subsection;

(ii) subparagraph (C), (D), (G), or (H) of subsection (a)(2);

(iii) subparagraph (A), (B), (C), (E), or (F) of subsection (a)(3);

(iv) subsection (a)(6)(E);

(v) subparagraph (A) or (C) of subsection (a)(10); or

(vi) subsection (a)(10)(D), if the alien has received a conviction, award, compromise, settlement, or injunc-

tion for an offense described in clause (i) of such subsection, and if the court finds that the alien did not reasonably believe at the time such violation that the alien was a citizen; and

(C) the Secretary of Homeland Security, or the Attorney General, may waive any other provision of subsection (a).

(2) WAIVER FACTORS.—In making a determination under paragraph (1)(C), the following factors may be considered:

(A) The grounds of inadmissibility applicable to the alien.

(B) The alien's service in the United States military, or the degree to which the alien's removal would affect a close family member who is serving or has served in the Armed Forces.

(C) The length of time the alien has lived in the United States.

(D) The degree to which the alien would be impacted by his or her removal from the United States.

(E) The existence of close family ties within the United States.

(F) The degree to which the alien's removal would adversely affect the alien's United States citizen, or lawful permanent resident, parents, spouses, children, sons, daughters, or siblings.

(G) The alien's history of employment in the United States, including whether the alien has been self-employed or has owned a business.

(H) The degree to which the alien's removal would adversely affect the alien's United States employer or business.

(I) The degree to which the alien has ties to the alien's community in the United States or has contributed to the Nation through community, volunteer, or other activities.

* * * * * * *

CONDITIONAL PERMANENT RESIDENT STATUS FOR CERTAIN ALIEN SPOUSES AND SONS AND DAUGHTERS

SEC. 216. (a) * * *

* * * * * * *

(c) REQUIREMENTS OF TIMELY PETITION AND INTERVIEW FOR REMOVAL OF CONDITION.—

(1) IN GENERAL.—In order for the conditional basis established under subsection (a) for an alien spouse or an alien son or daughter to be removed—

(A) * * *

(B) in accordance with subsection (d)(3), the alien spouse and the petitioning spouse (if not deceased *or serving in the Armed Forces at the time of the interview*) must appear for a personal interview before an officer or employee of the Service respecting the facts and information described in subsection (d)(1).

* * * * * * *

(d) DETAILS OF PETITION AND INTERVIEW.—

(1) * * *

(2) PERIOD FOR FILING PETITION.—

(A) 90-DAY PERIOD BEFORE SECOND ANNIVERSARY.—Except as provided in [subparagraph (B),] *subparagraphs (B) and (D),* the petition under subsection (c)(1)(A) must be filed during the 90-day period before the second anniversary of the alien's obtaining the status of lawful admission for permanent residence.

* * * * * * *

(D) FILING OF PETITIONS DURING MILITARY SERVICE.—In the case of an alien who is serving as a member of the Selected Reserve of the Ready Reserve or in an active-duty status in the military, air, or naval forces of the United States during the 90-day period described in subparagraph (A), the alien may file the petition under subsection (c)(1)(A) during the 6-month period beginning on the date on which the alien is discharged from such service.

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CHAPTER 4—INSPECTION, APPREHENSION, EXAMINATION, EXCLUSION, AND REMOVAL

* * * * * * *

GENERAL CLASSES OF DEPORTABLE ALIENS

SEC. 237. (a) * * *

* * * * * * *

(d) MILITARY SERVICE PERSONNEL AND FAMILY MEMBERS.—

(1) IN GENERAL.—With respect to an alien who served honorably at any time in the Armed Forces of the United States, and who, if separated from such service, separated under honorable conditions, or an alien who is the spouse, child, son, daughter, parent, or minor sibling of a member serving in the Armed Forces of the United States—

(A) paragraphs (1)(D), (3)(A), and (5) of subsection (a) shall not apply;

(B) the Secretary of Homeland Security, or the Attorney General, shall not waive—

(i) subsection (a)(1)(E);

(ii) subsection (a)(2)(A)(ii), if the alien actually was incarcerated for 5 years or more for the offenses described in such subsection;

(iii) subsection (a)(2)(A)(iii), if the aggravated felony involved was an offense described in subparagraph (A), (B), (C), (D), (E)(i), (H), (I), (K)(i), (K)(ii), (K)(iii), (L)(i), (L)(ii), (L)(iii), (M)(ii), (R), (S), or (U) of section 101(a)(43);

(iv) clause (iv) or (v) of subsection (a)(2)(A);

(v) clause (i) or (ii) of subsection (a)(2)(D);

(vi) subsection (a)(2)(D)(iii), if the offense is a violation of the Trading With the Enemy Act;

(vii) subsection (a)(2)(D)(iv), if the offense is a violation of section 278;

(viii) subparagraph (A), (B), (C)(i), (D), or (E) of subsection (a)(4); or

(ix) subsection (a)(6)(A), if the alien has received a conviction, award, compromise, settlement, or injunction for an offense described in such subsection, and if the court finds that the alien did not reasonably believe at the time such violation that the alien was a citizen; and

(C) the Secretary of Homeland Security, or the Attorney General, may waive any other provision of subsection (a).

(2) WAIVER FACTORS.—In making a determination under paragraph (1)(C), the following factors may be considered:

(A) The grounds of deportability applicable to the alien.

(B) The alien's service in the United States military, or the degree to which the alien's removal would affect a close family member who is serving or has served in the Armed Forces.

(C) The length of time the alien has lived in the United States.

(D) The degree to which the alien would be impacted by his or her removal from the United States.

(E) The existence of close family ties within the United States.

(F) The degree to which the alien's removal would adversely affect the alien's United States citizen, or lawful permanent resident, parents, spouses, children, sons, daughters, or siblings.

(G) The alien's history of employment in the United States, including whether the alien has been self-employed or has owned a business.

(H) The degree to which the alien's removal would adversely affect the aliens United States employer or business.

(I) The degree to which the alien has ties to the alien's community in the United States or has contributed to the Nation through community, volunteer, or other activities.

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INITIATION OF REMOVAL PROCEEDINGS

SEC. 239. (a) * * *

* * * * * * *

(f)(1) A notice to appear shall not be issued against an alien who served honorably at any time in the Armed Forces of the United States, and who, if separated from such service, separated under honorable conditions, without prior approval from the Director of the United States Citizenship and Immigration Services or the Assistant Secretary of Homeland Security for U.S. Immigration and Customs Enforcement.

(2) In determining whether to issue a notice to appear against such an alien, the Director or the Assistant Secretary shall consider the alien's eligibility for naturalization under section 328 or 329, as well as the alien's record of military service, grounds of deportability applicable to the alien, and any hardship to the Armed Services, the alien, and his or her family if the alien were to be placed in removal proceedings.

(3) An alien who served honorably at any time in the Armed Forces of the United States, and who, if separated from such service, separated under honorable conditions, shall not be removed from the United States under subparagraph (A)(i) or (B)(iii) of section 235(b)(1), section 238, or section 241(a)(5).

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TITLE III—NATIONALITY AND NATURALIZATION

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CHAPTER 2—NATIONALITY THROUGH NATURALIZATION

* * * * * * *

NATURALIZATION THROUGH SERVICE IN THE ARMED FORCES OF THE UNITED STATES

SEC. 328. (a) A person who has served honorably at any time in the Armed Forces of the United States for a period or periods aggregating one year, and who, if separated from such service, was never separated except under honorable conditions, may be naturalized without having resided, continuously immediately preceding the date of filing such person's application, in the United States for at least five years, and in the State or district of the Service in the United States in which the application for naturalization is filed for at least three months, and without having been physically present in the United States for any specified period, if such application is filed while the applicant is still in the service or within **[**six months**]** *one year* after the termination of such service.

* * * * * * *

[(c) In the case such applicant's service was not continuous, the applicant's residence in the United States and State or district of the Service in the United States, good moral character, attachment to the principles of the Constitution of the United States, and favorable disposition toward the good order and happiness of the United States, during any period within five years immediately preceding the date of filing such application between the periods of applicant's service in the Armed Forces, shall be alleged in the application filed under the provisions of subsection (a) of this section, and proved at any hearing thereon. Such allegation and proof shall also be made as to any period between the termination of applicant's service and the filing of the application for naturalization.**]**

[(d)**]** *(c)* The applicant shall comply with the requirements of section 316(a) of this title, if the termination of such service has been more than **[**six months**]** *one year* preceding the date of filing the application for naturalization, except that such service within five years immediately preceding the date of filing such application shall be considered as residence and physical presence within the United States.

[(e)**]** *(d)* Any such period or periods of service under honorable conditions, and good moral character, attachment to the principles of the Constitution of the United States, and favorable disposition toward the good order and happiness of the United States, during such service, shall be proved by duly authenticated copies of the records of the executive departments having custody of the records

of such service, and such authenticated copies of records shall be accepted in lieu of compliance with the provisions of section 316(a).

[(f)**]** *(e)* Citizenship granted pursuant to this section may be revoked in accordance with section 340 if the person is separated from the Armed Forces under other than honorable conditions before the person has served honorably for a period or periods aggregating five years. Such ground for revocation shall be in addition to any other provided by law, including the grounds described in section 340. The fact that the naturalized person was separated from the service under other than honorable conditions shall be proved by a duly authenticated certification from the executive department under which the person was serving at the time of separation. Any period or periods of service shall be proved by duly authenticated copies of the records of the executive departments having custody of the records of such service.

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DISSENTING VIEWS

Congress has long sought to facilitate the naturalization of non-citizens serving in the Armed Forces. In fact, our immigration laws have long contained three special naturalization provisions just for service members.[1] Then, after Congress learned that some of the members of the military who died in combat during "Operation Iraqi Freedom" were not United States citizens, Congress acted to provide enhanced benefits to permanent resident service members and their families.[2]

However, this bill is about a much different proposition. It is not about easing the naturalization of U.S. service members and providing substantive immigration benefits to the family members of service members killed in action. Rather, this bill is about granting amnesty and relief from the consequences of committing many serious crimes to most aliens who have ever served in the United States military—no matter how briefly or long ago they served. These immigration benefits also go to alien family members (spouses, minor children, adult sons and daughters, parents and even minor siblings) of persons now serving in the military or who have served in the military during times of conflict.

The American people are opposed to amnesty for lawbreakers. The American people want criminal aliens deported and our communities made safe. Unfortunately, this bill is on the wrong side of the American people.

When we look at an American soldier or veteran we almost always see someone who has made a sacrifice to uphold the American Constitution and the rule of law. This bill cheapens that image, and does a disservice to the vast majority of our non-citizen soldiers and their family members who have abided by the law.

This bill is opposed by the American Legion. The National Commander of the American Legion stated that:

> On behalf of 2.7 million members of the American Legion, I am writing in opposition to H.R. 6020 . . . [T]he center point for disagreement with this measure is our unequivocal opposition

[1] *See* sections 328, 329 & 329A of the Immigration and Nationality Act.
[2] *See* sections 1701–05 of Pub. L. No. 108–136.

> to granting amnesty to those residing illegally in the United States. Fundamental to our position is the distinction that must be made between . . . [legal] and . . . [illegal] immigrants. H.R. 6020 would reward non-citizen law breakers and undocumented immigrants with a short cut to citizenship that is nothing less than an official pardon for illegal acts: an amnesty. . . . Non-citizen service members' relatives who have entered the U.S. illegally or overstayed a visa or who may be fugitives from justice deserve no special adjustment. . . . No special pardon, no reprieve from lawlessness, no exoneration for bad behavior is given to the citizen soldier or their family because one wore the uniform of the United States military. . . . The American Legion remains adamantly opposed to the granting of pardons to illegal aliens.[3]

The bill grants immigration judges the ability to waive the grounds of inadmissibility and deportability for serious crimes, overturning a key policy change Congress made in 1996 to enhance public safety. The benefits of this bill extend to aliens who have committed serious crimes decades after separating from the service and to alien family members of persons serving or who have served in the military. The bill provides waivers for:

- crimes of moral turpitude,
- crimes of domestic violence, stalking and child abuse,
- crimes of violence for which term of imprisonment was at least one year,
- crime of theft for which term of imprisonment was at least one year,
- fraud offenses in which the loss to the victim was over $10,000,
- controlled substance crimes,
- returning to the U.S. after having previously departed the U.S. under immunity for having committed a serious criminal offense,
- gambling offenses and investing racketeering profits in businesses which are engaged in interstate commerce,
- passport and visa counterfeiting for which the term of imprisonment was at least one year,
- failure to appear for service of a criminal sentence, and
- failure to appear before a court to answer for a felony.

We must remember that information this Committee received from the Justice Department under subpoena revealed that 37% of criminal aliens whom the former Immigration and Naturalization Service released were subsequently convicted of another crime in the U.S.[4]

This bill creates a perverse incentive for persons to intentionally enter the military for the express purpose of procuring amnesty or relief from the immigration consequences of serious crimes for

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[3] Letter from Martin Conatser, National Commander, the American Legion, to Steve King, Ranking Member, Subcommittee on Immigration, Citizenship, Refugees, Border Security and International Law, House Judiciary Committee (July 30, 2008).

[4] H.R. Rep. No. 106–1048 at 256–57 (2001).

themselves or for their extended family members. This is not what service to our country is all about.

Finally, providing immigration benefits to extended-family members of immigrants, such as adult children and siblings, simply encourages rampant chain migration. With chain migration, one anchor immigrant eventually facilitates the immigration of many relatives increasingly distantly related to them. As the U.S. Commission on Immigration Reform chaired by Barbara Jordan found, there is no compelling national interest in the immigration of extended-family members.

LAMAR SMITH.
ELTON GALLEGLY.
RIC KELLER.
DARRELL ISSA.
STEVE KING.

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